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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION
13

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 REY MARTINEZ,

18 Defendant.
19

No. CR 04-0189 VRW

STIPULATION AND ~~PROPOSED~~
ORDER ADJUSTING MOTION
SCHEDULE AND EXCLUDING TIME
FROM THE SPEEDY TRIAL ACT
CALCULATION (18 U.S.C. §
3161(h)(8)(A))

20 On September 19, 2006, the parties appeared for a status hearing before the Court.
21 Assistant United States Attorneys Joseph Fazioli and Dana Wagner appeared on behalf of
22 the government. Assistant Federal Public Defendant Josh Cohen appeared on behalf of
23 the defendant Rey Martinez. At the September 19, 2006 hearing, defense counsel
24 requested leave of the Court to file a *Franks* motion challenging the search warrant in this
25 case. The Court set the following schedule in the event defendant were to file *Franks*
26 motion:

27 Defendant's Motion Due: October 10, 2006

28 Government's Response Due: November 7, 2006

STIPULATION AND [PROPOSED] ORDER
CR 04-0189 VRW

Defendant's Reply Due: November 14, 2006

Motion Hearing: November 21, 2006.

The parties agreed, and the Court held, that an exclusion of time under the Speedy Trial Act between September 19, 2006 and November 21, 2006 was appropriate on the grounds of effective preparation of counsel. The defendant subsequently filed his *Franks* motion on October 10, 2006.

Government counsel now requests that the briefing schedule and hearing date on that motion be adjusted. Government counsel is currently taking Family and Medical Leave to assist with a family matter, and does not anticipate returning to work until the first week of November. Defense counsel does not object to the requested change in schedule detailed below. It is the parties' understanding that the Court is available on December 12, 2006.

In light of the above, the parties agree, and the Court finds and holds, as follows:

1. Government's response to defendant's *Franks* motion is due no later than Tuesday, November 21, 2006.

2. Defendant's reply is due no later than Tuesday, December 5, 2006.

3. The hearing on defendant's motion to suppress shall take place on Tuesday, December 12, 2006.

4. The time between September 19, 2005 and December 12, 2006 is excluded under the Speedy Trial Act. The parties agree that the failure to grant the requested continuance would unreasonably deny defense counsel reasonable time necessary for effective preparation, taking into account the exercise of due diligence. See 18 U.S.C. § 3161(h)(8)(B)(iv). The parties agree that the ends of justice served by granting the requested continuance outweigh the best interest of the public and the defendant in a

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speedy trial and in the prompt disposition of criminal cases. See 18 U.S.C. §
3161(h)(8)(A).

STIPULATED:

DATED: 10/18/06


JOSH COHEN
Assistant Federal Public Defender

DATED: 10/18/06


JOSEPH A. FAZIOLI
Assistant United States Attorney

IT IS SO ORDERED.

DATED: 10/23/2006


VAUGHN R. WALKER
UNITED STATES DISTRICT JUDGE